

**From:** Gregg Berkholtz  
**To:** Microsoft ATR  
**Date:** 1/24/02 1:14am  
**Subject:** Microsoft Settlement

Dear Renata B. Hesse,

Under the Tunney Act, I wish to comment on the proposed Microsoft settlement.

I am opposed to the proposed settlement in the Microsoft antitrust trial. I feel that the current proposed settlement does not fully redress the actions committed by Microsoft in the past, nor inhibit their ability to commit similar actions in the future.

As a full-time Senior Systems Administrator for a medium sized private company based in the Portland Oregon area, and a part-time small business owner, it is a painfully clear and daily reminder the extent to which Microsoft has abused the public trust with its monopoly power. Please, reject this proposal in favor of a much stronger remedy.

Today's information based society is particularly hard hit by Microsoft's crimes. The most cursory review of my day finds several obvious examples of the price that we all must pay for Microsoft's monopolistic actions. For example;

- \* Websites often display properly only under Microsoft's Internet Explorer. My opinion is that this is mostly due to the market dominance that Internet Explorer gained after Microsoft began to force the installation of Internet Explorer on all new computers, while simultaneously prohibiting the installation of other web browsers.
- \* My email accounts are regularly bombarded with unwanted and large emails containing the latest Microsoft Outlook virus. Microsoft has gone far in requiring the Outlook email client on new computers: In the Windows 95/98 world, Outlook can be uninstalled by someone who is proficient in computers. In the Windows 2000 world, Microsoft has a mandatory program/process that runs in the background that monitors files pertaining to Outlook, and forces it's installation (or re-installation); If you attempt to uninstall Outlook, Windows 2000 will either reinstall Outlook automatically, or you will be repeatedly prompted to reinstall it.

My opinion is that Outlook is more prolific because of the apparent requirement that it must be installed on all computers (irregardless of whether or not its' components are being used), and that the lack of opportunity for competition in the marketplace has caused this generally forced acceptance.

\* When I recommend to my friends, family, co-workers and customers that they buy a prebuilt computer from a major hardware vendor I must explain that it can only be bought bundled with Microsoft Windows. These problems exist, not because of a lack of consumer demand for a solution, or lack of a willingness to pay, but because Microsoft does not allow it. In-fact, in the computer industry, the requirement of the Microsoft OS on a new computer is frequently referred to as the Microsoft Tax.

The vast majority of the provisions within the settlement only formalize the status quo. Of the remaining provisions, none will effectively prohibit Microsoft from abusing its current monopoly position in the operating system market. This is especially important in view of the seriousness of Microsoft's past transgressions. That the fact that even today they still continue to perform similar acts of deception.

Most important, the proposed settlement does nothing to correct Microsoft's previous actions. There are no provisions that correct or redress their previous abuses. They only attempt to prohibit the future repetition of those abuses. This, in my opinion, goes against the very foundation of law. If a person or organization is able to commit illegal acts, benefit from those acts and then receive as a "punishment" instructions that they cannot commit those acts again, they have still benefited from their illegal acts. That is not justice, not for the victims of their abuses and not for the American people in general.

The proposed settlement does not come close to recouping the illegal gains which Microsoft has made off American consumers much less come close to penalizing Microsoft for the illegal abuses. While it is doubtful that the true losses can ever be recovered from Microsoft in any settlement. The beginnings of a fair settlement should include the preeminent opening of all Windows and Office API's and file formats as well as large cash payments to open source programming efforts which compete with Microsoft products. In this way, Microsoft's ill gotten gains can be used for the public good.

While the Court's desire that a settlement be reached is well-intentioned, it is wrong to reach an unjust settlement just for settlement's sake. A wrong that is not corrected is compounded.

Sincerely,  
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